

REMARKS

In the Office Action dated April 5, 2002, the Examiner rejected claims 33-37, 39-43, 50-58 and 63-64 under 35 U.S.C. §§ 102, 103 and/or 112. In the ensuing sections of this response, applicant will respond to those rejections and highlight the differences between the pending claims and the cited references such that it becomes apparent to the Examiner that these rejections should be reconsidered and withdrawn. With respect to the §112 rejection, applicant has amended the claims and wishes to thank the Examiner for calling these issues to his attention.

Applicant firmly believes the above amendments and the following comments will convince the Examiner that the rejection of the pending claims under §102 and §103 should be reconsidered and withdrawn. In particular, applicant would like to direct the Examiner's attention to applicant's idea for a novel seat for use in conjunction with existing hunting tree stand support systems, wherein the seat comprises a rectangular support frame including upper and lower members, a plurality of fittings positioned on the support frame, and a rectangular sling seat including flexible elements extending from its upper and lower corners, where the plurality of fittings on the support frame are configured for removably attaching the

1 flexible elements of the sling seat.. Applicant is unaware
2 of anything like this in the prior art, and even the
3 references relied on by the Examiner do not suggest the
4 applicant's novel invention. In short, applicant
5 respectfully submits that the Examiner's reliance on
6 Nelson, Davis, Hoff, Schnitzel and Miller is misplaced --
7 as applicant's invention is very different from what is
8 disclosed in the cited art.

9 Initially, the Examiner rejected claims 33-41, 50-56
10 and 63-64 under 35 U.S.C. §102(b) as being anticipated by
11 Nelson. Applicant respectfully submits that these claims
12 are not anticipated by Nelson. It is black letter law that
13 to be anticipatory, a prior art reference must disclose
14 each and every element of the claim or claims at issue --
15 Nelson falls short of this requirement.

16 Briefly, Nelson discloses a conventional tree
17 suspended hunter support device comprising a frame
18 including two parallel bars, a tree wrap member, a cross
19 bar and a bag (or seat). Applicant respectfully submits
20 that this is very different from the present invention.
21 That is, as is readily apparent from a careful review of
22 Nelson, nowhere does Nelson teach or suggest a seat for use
23 with an existing tree stand that is readily detachable or
24 removable for greater ease of maneuverability on the tree

1 stand. Specifically, Nelson fails to teach or disclose
2 both the claimed fittings that are configured for removably
3 attaching the flexible elements of the sling seat as
4 claimed as well as the claimed flexible elements. Finally,
5 the device of Nelson cannot be used with an existing tree
6 stand like the claimed invention. Thus, Nelson fails to
7 teach or disclose every element of the claimed invention of
8 at least claims 33-41, 50-56 and 63-64.

9 Next, the Examiner rejected claims 50, 53-55 and 64
10 under 35 U.S.C. §102(b) as being anticipated by Davis.
11 Again, applicant submits that these claims are not
12 anticipated by Davis. Once again, it is black letter law
13 that to be anticipatory, a prior art reference must
14 disclose each and every element of the claim or claims at
15 issue -- Davis also falls short of this requirement.

16 Briefly, Davis discloses a portable tree stand
17 comprising a platform, a supporting frame and brace, and a
18 folding seat member. Applicant respectfully submits that
19 this is different from the present invention. It is
20 apparent that Davis nowhere teaches or suggests a removable
21 seat for use with an existing tree stand such that it
22 provides greater ease of maneuverability for a user
23 positioned on the tree stand. In particular, Davis fails
24 to disclose fittings configured for removably attaching the

1 flexible elements of the sling seat to the support frame.

2 Rather, Davis discloses a folding seat which does not have
3 and does not require the claimed fittings. Similarly, the
4 device of Davis does not teach the flexible elements as
5 claimed for the removable attachment of the sling seat to
6 the support frame fittings. Thus, Davis clearly fails to
7 teach every element of the claimed invention of at least
8 claims 50, 53-55 and 64.

9 Therefore, since the prior art must teach each and
10 every element of the claimed invention to anticipate the
11 claim or claims at issue, applicant respectfully submits
12 that the Examiner's rejection of claims 33-41, 50-56 and
13 63-64 under §102(b) in view of Nelson and/or Davis should
14 be reconsidered and withdrawn.

15 Next, the Examiner rejected claims 33-37, 39-42, 50-57
16 and 63-64 under 35 U.S.C. §103(a) as being unpatentable
17 over Davis in view of Hoff, as well as claims 43 and 58
18 under 35 U.S.C. §103(a) as being unpatentable over Davis in
19 view of Hoff, and in further view of either Schnitzel or
20 Miller. Applicant respectfully submits that claims 33-37,
21 39-43, 50-58 and 63-64 are not rendered obvious by the
22 cited references, either alone or in combination.

23 Applicant further submits that, with the benefit of the
24 teachings of applicant's specification, the Examiner's

1 rejection could only be the result of hindsight
2 reconstruction of the applicants' invention. Moreover,
3 even if the cited references were properly combined, such
4 combination still would not teach all of the novel and non-
5 obvious features of the present invention as claimed.

6 Initially, applicant disagrees with the Examiner's
7 opinion as to the teachings of both Davis and Hoff. As
8 discussed above, Davis discloses a portable tree stand
9 comprising a platform, a supporting frame and brace, and a
10 folding seat member. However, as pointed out previously,
11 Davis fails to teach a removable seat (for use with an
12 existing tree stand) comprising fittings configured for
13 removably attaching the flexible elements of the sling seat
14 to the support frame, and the flexible elements as claimed
15 for the removable attachment of the sling seat to the
16 support frame fittings. The device according to Davis
17 merely provides tree stand having a folding seat which is
18 not removably attached to its frame, and which does not
19 have and does not require the claimed fittings or flexible
20 elements of the claimed invention. Further, applicant
21 disagrees that there is any motivation or suggestion to
22 combine Davis' tree stand and folding seat with the ultra
23 portable collapsible chair of Hoff.

1 Referring Hoff, applicant agrees with the Examiner
2 that Hoff discloses "a seat supported by a frame by tying
3 (attaching means) the seat to apertures (fittings) of the
4 frame." First of all, contrary to the Examiner's
5 suggestion, there would be no motivation for anyone to
6 modify the folding seat of Davis to be tied to its folding
7 frame. The purpose of Hoff's tying of the seat to the
8 frame is to facilitate the folding of the seat in a very
9 compact manner. The seat according to Davis is already
10 foldable, and hence would not be modified such that the
11 seat be tied to the frame. Moreover, nowhere does Hoff
12 disclose that his "tying" results in a removably attached
13 seat to its support frame. Rather such attachment created
14 by the tying of Hoff is more permanent in nature - and
15 requires the untying of various knots and unlacing of the
16 rope or cord to remove the seat from the frame. This is
17 nothing like the claimed invention. In fact, nothing in
18 either Davis or Hoff, either alone or in combination, teach
19 or suggest all of the elements of applicant's claimed
20 invention. Therefore, applicant submits that the rejection
21 of claims 33-37, 39-42, 50-57 and 63-64 as being
22 unpatentable over Davis in view of Hoff is improper and
23 should be reconsidered and withdrawn.

24 Turning lastly to the Examiner's rejection of claims

1 43 and 58 under 35 U.S.C. § 103(a), applicant submits that
2 the Examiners understanding of the present invention and/or
3 the teachings of the cited references is misplaced. Upon
4 closer review of Davis, Hoff, Schnitzel and Miller, in view
5 of the amendments and remarks made herein above, applicant
6 submits that it will be apparent to the Examiner that his
7 rejection should be reconsidered and withdrawn.

8 Specifically, the cited references, either alone or in
9 combination, fail to teach each and every element of the
10 claimed invention. Davis and Hoff are discussed above with
11 respect to claims 33-37, 39-42, 50-57 and 63-64.

12 Similarly, both Schnitzel and Miller also fail to teach a
13 removable seat (for use with an existing tree stand)
14 comprising fittings configured for removably attaching the
15 flexible elements of the sling seat to the support frame,
16 and the flexible elements as claimed for the removable
17 attachment of the sling seat to the support frame fittings.

18 Rather, Schnitzel merely teaches a hanging chair or swing,
19 while Miller discloses a collapsible, tensile-integrity
20 chair, neither of which have any relation to a seat for use
21 with a hunting tree stand. Thus, even if the combination
22 of references as suggested by the Examiner were proper,
23 which applicant believes is not, such combination would
24 still not teach each and every element of the claimed

1 invention, including claims 43 and 58.

2 Further, the applicant respectfully points out that,
3 standing on their own, the cited references provide no
4 justification for the combination asserted by the Examiner.

5 "Obviousness cannot be established by combining the
6 teachings of the prior art to produce the claimed
7 invention, absent some teaching or suggestion supporting
8 the combination. Under section 103, teachings of
9 references can be combined only if there is some suggestion
10 or incentive to do so." *ACS Hospital Systems Inc. v.*
11 *Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929,
12 933 (Fed. Cir. 1984) (emphasis in original).

13 The cited references provide no such suggestion or
14 incentive for the combination suggested by the Examiner.
15 Therefore, the obviousness rejection could only be the
16 result of a hindsight view with the benefit of the
17 applicant's specification. However,

18 "To draw on hindsight knowledge of the
19 patented invention, when the prior art does not
20 contain or suggest that knowledge, is to use the
21 invention as a template for its own
22 reconstruction -- an illogical and inappropriate
23 process by which to determine patentability. The
24 invention must be viewed not after the blueprint
25 has been drawn by the inventor, but as it would
26 have been perceived in the state of the art that
27 existed at the time the invention was
28 made." (citations omitted) *Sesonics v. Aerasonic*
29 *Corp.*, 38 U.S.P.Q. 2d. 1551, 1554 (1996).

30 In addition, the combination or expansion advanced by

1 the Examiner is not legally proper -- on reconsideration
2 the Examiner will undoubtedly recognize that such a
3 position is merely an "obvious to try" argument. The
4 disclosure in the specification and claims of Davis, Hoff,
5 Schnitzel and Miller do not reveal any functional or design
6 choices that could possibly include that of the applicant's
7 invention. Accordingly, it was not obvious to combine
8 either Davis and Hoff or Davis, Hoff, Schnitzel and/or
9 Miller to arrive at the present invention. At best it
10 might be obvious to try such a combination. Of course,
11 "obvious to try" is not the standard for obviousness under
12 35 U.S.C. §103. *Hybritech, Inc. v. Monoclonal Antibodies,*
13 *Inc.*, 231 U.S.P.Q. 81, 91 (Fed. Cir. 1986).

14 Under the circumstances, we respectfully submit that
15 the Examiner has succumbed to the "strong temptation to
16 rely on hindsight." *Orthopedic Equipment Co. v. United*
17 *States*, 702 F.2d 1005, 1012, 217 U.S.P.Q. 193, 199 (Fed.
18 Cir. 1983):

19 "It is wrong to use the patent in suit as a
20 guide through the maze of prior art references,
21 combining the right references in the right way
22 so as to achieve the result of the claim in suit.
23 Monday morning quarter backing is quite improper
24 when resolving the question of non-obviousness in
25 a court of law." *Id.*

26 Applicant submits that the only "motivation" for the
27 Examiner's expansion or combination of the references is

1 provided by the teachings of applicant's own disclosure.

2 No such motivation is provided by the references
3 themselves.

4 Therefore, as is evidenced by the above amendments and
5 remarks, the present invention, for the first time,
6 discloses a hunting seat for use in conjunction with
7 existing tree stand support systems, wherein the seat
8 comprises a rectangular support frame including upper and
9 lower members, a plurality of fittings positioned on the
10 support frame, and a rectangular sling seat including
11 flexible elements extending from its upper and lower
12 corners, where the plurality of fittings on the support
13 frame are configured for removably attaching the flexible
14 elements of the sling seat. An apparatus such as this is
15 neither taught nor suggested anywhere in the prior art,
16 including Nelson, Davis, Hoff, Schnitzel and Miller.

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CONCLUSION

In view of the foregoing, applicant respectfully submits that the invention represents a patentable contribution to the art and the application is now in condition for allowance. Early and favorable action is accordingly solicited.

Respectfully submitted,

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